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AUDITOR-CONTROLLER

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June 29, 2016

TO: Cynthia A. Harding, M.P.H., Interim Director  
Department of Public Health

FROM: John Naimo   
Auditor-Controller

SUBJECT: **HIPAA AND HITECH ACT COMPLIANCE REVIEW – NORTH HOLLYWOOD MEDICAL THERAPY UNIT**

We have completed a review of the Department of Public Health (DPH) North Hollywood Medical Therapy Unit's (NHMTU) compliance with the Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic Clinical Health (HITECH) Act.<sup>1</sup>

The Medical Therapy Program (MTP) is part of California Children Services (CCS), a statewide program that coordinates and pays for medical care and therapy services for children under 21 years of age with certain health care needs. MTP provides physical therapy, occupational therapy, and medical therapy conference services<sup>2</sup> for children who have handicapping conditions<sup>3</sup>, generally due to neurological or musculoskeletal disorders. In the County, CCS and MTP programs are administered by DPH's Children's Medical Services (CMS). Medical Therapy Units (MTUs) are located in public schools. We conducted our review at NHMTU, located in the Charles Leroy Lowman Special Education Center, as it is the largest of the 24 MTU sites in the County.

**Overall Summary**

At the time of our review, we found some deficiencies in NHMTU's HIPAA and HITECH program. We made several recommendations, which NHMTU and CMS management have already implemented, or have agreed to implement. A summary of our findings is included in Attachment I. DPH's response is included as Attachment II.

<sup>1</sup> 45 Code of Federal Regulations (CFR) Parts 160 and 164

<sup>2</sup> Medical therapy conference is a conference for the child and family to meet with the MTU team to ascertain the appropriate treatment for the child.

<sup>3</sup> Handicapping conditions is a clinical term to describe a handicapped student who has physical and/or mental impairment(s).

### **Approach/Scope**

Our review utilized the *HIPAA Privacy Rule and Health Information Technology for Economic Clinical Health (HITECH) Act Audit Tool* in evaluating NHMTU's compliance with the HIPAA Privacy Rule and DPH's HIPAA Privacy Rule policies and procedures. DPH management is responsible for establishing and maintaining effective internal compliance with HIPAA regulations, and has oversight of the HIPAA program throughout their facilities, including NHMTU. We considered DPH's internal controls over their compliance program and the HIPAA Privacy Rule requirements that could have a direct and material effect on NHMTU. We noted that at the time of this review, DPH was in the process of finalizing their Department's HIPAA Privacy Rule policies, and had implemented the following eight HIPAA Privacy Rule policies:

1. Department of Public Health Policy Number 1208, Minimum Necessary Requirements for Uses and Disclosures of Protected Health Information (PHI)
2. Department of Public Health Policy Number 1210, Disciplinary Actions/Sanctions for Failure to Comply with Privacy Policies and Procedures
3. Department of Public Health Policy Number 1223, Safeguards for Protected Health Information (PHI)
4. Department of Public Health Policy Number 1230, Disclosures of Protected Health Information (PHI) by Workforce Crime Victims Without the Patient's Authorization
5. Department of Public Health Policy Number 1231, Disclosures of Protected Health Information (PHI) Without Authorization for Public Health Activities
6. Department of Public Health Policy Number 1232, Permitted Uses and Disclosures of Protected Health Information for Treatment, Payment, or Health Care Operations Without Patient Authorization
7. Department of Public Health Policy Number 1234, Permitted Uses and Disclosures of Protected Health Information for Law Enforcement Requests Without Authorization
8. Department of Public Health Policy Number 1236, Privacy and Security Breach Notification Policy.

Our review covered the HIPAA Privacy Rule requirements for:

- Notice of Privacy Practices (NPP) for Protected Health Information (PHI)
- Safeguards for PHI
- Training
- Complaint Process
- Uses and Disclosures Requiring Authorization
- Accounting for Disclosures of PHI
- HITECH Act Breach Notification Rule

## **Results of Review and Recommendations**

### **Notice of Privacy Practices for Protected Health Information**

The HIPAA Privacy Rule requires a covered entity with direct treatment relationships with individuals to give the NPP to every individual no later than the date of first service delivery, and to make a good faith effort to obtain the individual's written acknowledgment of receipt of the NPP. If the provider maintains an office or other physical site where care is provided directly to individuals, the provider must also post the NPP in the facility in a clear and prominent location where individuals are likely to see it, as well as make the NPP available to those who ask for a copy.<sup>4</sup>

During our on-site review of NHMTU, we observed that the CCS NPP was posted in the facility's entrance area, but the DPH NPP was not posted. NHMTU management informed us that they did not know that they had to post the DPH NPP. We explained that since the program is overseen by DPH, the MTUs are also required to post the DPH NPP in prominent patient locations. In addition, we notified NHMTU management that HIPAA requires that they provide patients with the DPH NPP no later than the date of the first service delivery, and make their best attempt to obtain the patient's or patient's legal representative's written acknowledgment of receipt of the NPP. NHMTU and CMS management agreed to comply. We verified that the DPH NPP had been posted in the entrance of the NHMTU by the conclusion of our on-site review.

Based on these findings, it appears that NHMTU was not in compliance with the NPP for PHI standard at the time of our review.

### **Recommendations**

#### **Children's Medical Services management:**

- 1. Ensure all Medical Therapy Units post the Department of Public Health Notice of Privacy Practices in the prominent client locations at their respective facilities.**
- 2. Ensure all Medical Therapy Units staff provide the Department of Public Health Notice of Privacy Practices to existing patients whose cases are currently open at the date of their next service delivery or visit, and to every new patient on the date of first service delivery. In addition, for those patients who are provided with the Notice of Privacy Practices, Medical Therapy Units staff must make a good faith effort to obtain their written acknowledgment of receipt of the notice.**

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<sup>4</sup> 45 CFR 164.520

### **Safeguards for Protected Health Information**

A covered entity must have in place appropriate administrative, physical, and technical safeguards to protect the privacy of PHI. A covered entity must reasonably safeguard PHI and electronic PHI, and make reasonable efforts to prevent any intentional or unintentional use or disclosures that violate the HIPAA Privacy Rule.

#### **Technical Safeguards**

CMS Information Technology (IT) management informed us that NHMTU is fully compliant with the Board of Supervisors' May 27, 2014 motion, which requires all County workstation hard drives to be encrypted. NHMTU workstations are encrypted by WinMagic SecureDoc software, and equipped with port control software, Safend Protector, to protect personally identifiable information and PHI.

We reviewed the data encryption and port control reports from CMS IT management on all workstations at NHMTU. The reports identified 14 connected workstations at NHMTU, and indicated that all of them were protected by the above-mentioned software. We did not inspect workstations or separately verify the encryption status of individual computers.

#### **Access Controls**

A covered entity must implement technical policies and procedures that allow only authorized persons to access electronic PHI.

Staff from CMS IT told us that NHMTU user accounts are deactivated upon notice of a change in employment status by DPH Human Resources Bureau. Once the user account is disabled or terminated, the individual is unable to access DPH systems.

In order to verify CMS IT's account suspension controls, we requested a list of NHMTU employees who were either on extended leave or terminated County service between calendar years, 2012 and 2015. We noted that one employee retired, and another employee was on medical leave during the period requested. Our review of the documentation provided showed that the employees' IT system accounts were disabled or terminated in a timely manner upon notice of an employment status change.

We also reviewed DPH IT's Deprovisioning Procedure, which specifies the internal protocols that ensure departed employees' access to IT systems are terminated in a timely manner. We noted that the procedures provide adequate guidance for when accounts should be disabled and who is responsible.

### Administrative and Physical Safeguards

During our on-site review of NHMTU, we observed that a multi-function printer with scanning, copying, and fax capabilities was located near the client's therapy room, in an unoccupied staff area separated by a door without a lock. In addition, we observed a document with PHI on the printer during our review. NHMTU management told us that due to limited space, they are unable to move the printer to a more secure area.

After our on-site review, NHMTU reconfigured the printer to not automatically print faxes. Now, staff will be prompted when a fax has been received and must manually elect to print faxes. Staff will be able to remove printed faxes and other documents from the printer promptly, which should lessen the possibility of incidental or wrongful disclosures (e.g., in the event patients or other visitors are near the printer, faxes containing PHI will not be printed and left unattended).

We observed that NHMTU medical charts are stored in lockable cabinets, which are secured with a key and are accessible only by the NHMTU management and staff that have a business need. However, NHMTU did not have a process in place to record and track access to medical charts or the reason for the access. We recommended that NHMTU management develop a protocol to ensure that access to the medical charts is properly documented. Subsequent to our on-site review, we received documentation from NHMTU confirming that tracking procedures were developed and implemented.

Based on these findings, it appears that NHMTU was not in compliance with the safeguards for PHI standard at the time of our on-site review.

### Recommendations

#### **North Hollywood Medical Therapy Unit management:**

- 3. Remind all workforce members to promptly pick up their print jobs when printing faxes and documents from the multi-function printer near the client's therapy room.**
- 4. Ensure all workforce members follow the medical charts tracking procedures by conducting periodic reviews of the tracking logs.**

### Training

As a HIPAA covered program, NHMTU must train all workforce members on policies and procedures related to PHI as required by the HIPAA Privacy and Security Rules, and retrain staff when regulations are updated, to the extent necessary and appropriate for their jobs. Workforce members include employees, volunteers, and trainees.

We noted that DPH's Office of Organizational Development and Training is responsible for ensuring its workforce members receive general HIPAA compliance training via the Learning Net. NHMTU management is responsible for training staff on DPH HIPAA policies and procedures, and these policies are made available to workforce members via DPH's Intranet site.

Our review of NHMTU employees' HIPAA training certificates, provided by NHMTU management, confirmed that 15 (100%) out of 15 workforce members have completed the required HIPAA compliance training.

It appears that NHMTU is in compliance with the HIPAA training standard.

### **Complaint Process**

A covered entity must provide a process for individuals to make complaints about the covered entity's policies, procedures, and potential violations of the HIPAA regulations. Complaints must be documented and maintained for six years.

CMS management informed us that MTP patients are directed to address HIPAA-related complaints to the State, as per the CCS NPP. All patients are informed of this process verbally and in writing as part of the intake process. The process is also included in the Handbook for CCS Families posted on the CMS website.

We reiterated to NHMTU management that because the MTP is part of DPH, MTUs workforce members must make available to their patients a process to address their HIPAA complaints with DPH, the Chief HIPAA Privacy Officer (CHPO), and the U.S. Department of Health and Human Services' (HHS) Office for Civil Rights (OCR). Subsequent to our on-site review, CMS management stated that they will develop a general complaint form and accompanying procedures for the MTUs.

It appears that NHMTU is not adhering to the complaints process standard.

### **Recommendation**

- 5. Children's Medical Services management direct their Medical Therapy Units workforce members to follow the Department of Health Services Policy Number 361.11, Complaints Related to the Privacy of Protected Health Information, when assisting patients with complaints until they develop their own complaint form and accompany procedures.**

### **Uses and Disclosures Requiring Authorization**

OCR defines an authorization as a detailed document that gives covered entities permission to use PHI for specified purposes, which are generally other than treatment, payment, or health care operations, or to disclose PHI to a third party specified by the

patient. An authorization must specify a number of elements, including: (1) a description of the PHI to be used and disclosed, (2) the person authorized to make the use or disclosure, (3) the person to whom the covered entity may make the disclosure, (4) an expiration date, and (5) the purpose for which the information may be used or disclosed.

During our on-site review of NHMTU, we randomly selected medical charts and reviewed 30 completed authorization forms. Our review noted that while the authorization form includes pre-printed HIPAA-compliant elements, the staff did not consistently check off the applicable boxes or specify the required information.

### **Recommendations**

#### **North Hollywood Medical Therapy Unit management:**

- 6. Direct workforce members to review all active patients' authorization forms to ensure they are fully completed.**
- 7. Remind workforce members to complete all required fields in the authorization forms for new patients.**

### **Accounting for Disclosures of Protected Health Information**

The HIPAA Privacy Rule gives patients the right to request and receive an accounting of all disclosures of their PHI made by the covered entity, with certain exceptions, for up to six years after the disclosure. The following disclosures of PHI are excluded from the accounting requirement: (1) to the patient, (2) for treatment, (3) for payment and health care operations, (4) for facility directories, (5) pursuant to authorization, (6) pursuant to a limited data set agreement, (7) to persons involved in the patient's care, (8) for correctional institutions, and (9) for certain law enforcement purposes. In addition, covered entities may choose the best method to track disclosures, which may include a computer tracking system, manual log, and/or authorization forms.

CMS management reported that NHMTU has never received an accounting of disclosures request from a client. All disclosures are tracked through CCS applications, CMS Net and E-Chart, and the electronic health record (eHR). Depending on the types of requests and their method of submission, the requests are noted in the patients' eHR and paper charts. This allows CMS to generate a report of disclosures upon request by the client.

We reviewed five sample accounting of disclosures logs and found that the logs provided were on disclosures pursuant to client's authorization, which are excluded from HIPAA's accounting requirement. We discussed our findings with CMS management and requested sample accounting of disclosures logs on disclosures other than the disclosures that are excluded by HIPAA's accounting requirement, as stated above.

CMS told us that they are required by State to note all disclosures in their client's charts and the majority of their disclosures were made pursuant to a client's authorization. Based on the discussion we had with CMS, it appears that CMS' tracking process is compliant with the accounting for disclosures of PHI standard.

### **HITECH Act Breach Notification Rule**

HHS issued regulations requiring health care providers to notify patients when their health information is breached. Specifically, health care providers and other covered entities must promptly notify affected patients of a breach, as well as the HHS Secretary and the media in cases where a breach affects more than 500 patients. Breaches affecting fewer than 500 patients will be reported to the HHS Secretary annually. The regulations also require business associates of covered entities to notify the covered entity of breaches at or by the business associate. Further, HHS' Breach Notification regulations emphasize the importance of ensuring that all workforce members are appropriately trained and knowledgeable about what constitutes a breach and on the policies and procedures for reporting, analyzing, and documenting a possible breach of unsecured PHI.

During our on-site review, NHMTU management informed us that the workforce members are aware that they must report all incidents involving suspected or actual breaches to their immediate supervisors, who will report such incident to the DPH Privacy Officer. We reviewed DPH's Policy Number 1236, *Privacy and Security Breach Notification Policy*, and noted that it provides clear guidelines to workforce members. Our records show that NHMTU did not report any breaches to the CHPO or OCR during Fiscal Year 2014-15. Subsequent to our on-site review, we received documentation from NHMTU management regarding a non-reportable breach. We noted that NHMTU is adhering to their department's breach reporting policy.

### **Conclusion**

We discussed our findings with DPH and NHMTU management on May 2, 2016. Overall, our review indicates while there were areas of noncompliance, DPH has initiated substantial efforts to comply with the HIPAA Privacy regulations, as indicated by their attached response. We will follow-up with DPH management in 120 days from the date of this report to ensure all findings have been addressed. We thank DPH's Privacy Officer, CMS, and NHMTU managers and staff for their cooperation and assistance during this review.

Cynthia A. Harding, M.P.H.

June 29, 2016

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If you have any questions, please call me or your staff may contact Linda McBride, CHPO, at (213) 974-2166.

JN:AB:PH:RGC:LTM:JC

#### Attachments

c: Sachi A. Hamai, Chief Executive Officer  
Mary C. Wickham, County Counsel  
Mitchell H. Katz, M.D., Director, Los Angeles County Health Agency  
Eleanor Lehnkering, Privacy Officer, Department of Public Health  
Audit Committee  
Health Deputies

## HIPAA AND HITECH ACT COMPLIANCE REVIEW NORTH HOLLYWOOD MEDICAL THERAPY UNIT SUMMARY OF FINDINGS AND/OR RECOMMENDATIONS

The following table summarizes North Hollywood Medical Therapy Unit's compliance in each of the seven areas we assessed during our review:

<u>Regulations</u>	<u>Results</u>
Notice of Privacy Practices (NPP) for Protected Health Information (PHI) – 45 Code of Federal Regulations (CFR) § 164.520(c)	<p>Recommendations:</p> <p>Children's Medical Services management:</p> <ol style="list-style-type: none"> <li>1. Ensure all Medical Therapy Units post the Department of Public Health Notice of Privacy Practices in the prominent client locations at their respective facilities.</li> <li>2. Ensure all Medical Therapy Units staff provide the Department of Public Health Notice of Privacy Practices to existing patients whose cases are currently open at the date of their next service delivery or visit, and to every new patient on the date of first service delivery. In addition, for those patients who are provided with the Notice of Privacy Practices, Medical Therapy Units staff must make a good faith effort to obtain their written acknowledgment of receipt of the notice.</li> </ol>
Safeguards for PHI - 45 CFR § 164.530(c)	<p>Recommendations:</p> <p>North Hollywood Medical Therapy Unit management:</p> <ol style="list-style-type: none"> <li>3. Remind all workforce members to promptly pick up their print jobs when printing faxes and documents from the multi-function printer near the client's therapy room.</li> <li>4. Ensure all workforce members follow the medical charts tracking procedures by conducting periodic reviews of the tracking logs.</li> </ol>
Training – 45 CFR § 164.530(b)	Compliant
Complaint Process – 45 CFR § 164.530(d)	<p>Recommendation:</p> <ol style="list-style-type: none"> <li>5. Children's Medical Services management direct their Medical Therapy Units</li> </ol>

	workforce members to follow the Department of Health Services Policy Number 361.11, Complaints Related to the Privacy of Protected Health Information, when assisting patients with complaints until they develop their own complaint form and accompany procedures.
Uses and Disclosures Requiring Authorization – 45 CFR § 164.508(a)	<p>Recommendations:</p> <p>North Hollywood Medical Therapy Unit management:</p> <ol style="list-style-type: none"> <li>6. Direct workforce members to review all active patients' authorization forms to ensure they are fully completed.</li> <li>7. Remind workforce members to complete all required fields in the authorization forms for new patients.</li> </ol>
Accounting for Disclosures of PHI – 45 CFR § 164.528(a)	Compliant
HITECH Act Breach Notification Rule – 45 CFR § 164.400-414	Compliant



**CYNTHIA A. HARDING, M.P.H.**  
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May 25, 2016

TO: John Naimo  
Auditor-Controller

FROM: Cynthia A. Harding  
Interim Director

A handwritten signature in black ink that reads "Cynthia A. Harding". The signature is written in a cursive style with a large, looped "H" and a long, sweeping underline.

SUBJECT: **HIPAA AND HITECH ACT COMPLIANCE REVIEW – DEPARTMENT  
OF PUBLIC HEALTH, CHILDREN'S MEDICAL SERVICES NORTH  
HOLLYWOOD THERAPY UNIT**

The Department of Public Health (DPH), Children's Medical Services (CMS) program has reviewed the findings and recommendations contained in the HIPAA AND HITECH ACT Compliance Review of the DPH CMS North Hollywood Therapy Unit dated May 2, 2016. Following are the responses addressing each of the recommendations.

Recommendation 1: Ensure all Medical Therapy Units post the Department of Public Health Notice of Privacy Practices in the prominent client locations at their respective facilities.

Response: The DPH Notice of Privacy Practices (NPP) has been posted at all Medical Therapy Units.

Recommendation 2: Ensure all Medical Therapy Units staff provide the Department of Public Health Notice of Privacy Practices to existing patients whose cases are currently open at the date of their next service delivery or visit, and to every new patient on the date of first service delivery. In addition, for those patients who are provided with the Notice of Privacy Practices, Medical Therapy Units staff must make a good faith effort to obtain their written acknowledgment of receipt of the notice.

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Response: This recommendation is in the process of being implemented. Patients are being provided with both the DPH NPP and the NPP required by the California Department of Health Care Services. In addition, Medical Therapy Program (MTP) staff have been instructed to secure written acknowledgement of receipt of the DPH NPP during the visit in which the notice is provided.

Recommendation 3: Remind all workforce members to promptly pick up their print jobs when printing faxes and documents from the multi-function printer near the client's therapy room.

Response: All the Medical Therapy Units (MTU) are currently utilizing secure faxing. Upon arrival of a fax, the transmittal is stored in a dedicated file in the CMS network for retrieval. The recipient of the fax at the MTU is notified of the incoming fax via e-mail, which allows the fax recipient to print the transmittal on demand. Faxes no longer are automatically printed unless initiated by staff at the printer.

Recommendation 4: Ensure all workforce members follow the medical charts' tracking procedures by conducting periodic reviews of the tracking logs.

Response: MTU Supervisors and Managers will ensure adherence to the applicable tracking procedure on a quarterly basis.

Recommendation 5: Children's Medical Services management direct their Medical Therapy Units workforce members to follow the Department of Health Services Policy Number 361.11, Complaints Related to the Privacy of Protected Health Information, when assisting patients with complaints until they develop their own complaint form and accompany procedures.

Response: Effective March 16, 2016, DPH issued Policy Number 1211 superseding Department of Health Services Policy Number 361.11. CMS will complete implementation of DPH Policy Number 1211 by May 27, 2016 to allow sufficient time to orient MTP staff.

Recommendation 6: Direct workforce members to review all active patients' authorization forms to ensure they are fully completed.

Response: MTP staff have been instructed to review the Authorizations to Exchange Information forms with current patients at the time of their next appointment. MTU Supervisors and Managers will conduct quarterly random chart reviews to ensure the forms are being fully completed.

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Recommendation 7: Remind workforce members to complete all required fields in the authorization forms for new patients.

Response: MTP staff have been instructed to fully complete all applicable fields in the Authorization to Exchange Information forms at time of the first patient visit. MTU Supervisors and Managers will conduct quarterly random chart reviews to ensure the forms are being fully completed.

DPH views the review process and the resulting recommendations as an opportunity to continue strengthening our operations and the quality of services provided to Los Angeles County residents. The professionalism and feedback of the review team is greatly appreciated.

If you have any questions or need additional information, please let me know or your staff may contact Eleanor Lehnkering, DPH Privacy Officer at (323) 869-8211.

CAH:cvm

c: Each Health Deputy  
Sachi A. Hamai, Chief Executive Officer  
Mary C. Wickam, County Counsel  
Anna Long, Ph.D, M.P.H., Director, Children's Medical Services  
Eleanor Lehnkering, Privacy Officer, Department of Public Health  
Audit Committee